

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

JAMES D. JOHNSON, et al

PLAINTIFFS

V.

CIVIL ACTION NO. 3:04cv251LN

HALEY BARBOUR, et al

DEFENDANTS

**URGENT AND NECESSITOUS MOTION TO STAY PROCEEDINGS
DUE TO STATE OF EMERGENCY
DECLARED BY THE PRESIDENT OF THE UNITED STATES OF AMERICA**

COME NOW, the Defendants, by and through counsel, and file this their Motion to Stay Proceedings due to State of Emergency Declared by the President of the United States of America in connection with Hurricane Katrina, and would show the Court the following:

1.

On August 28, 2005, the President of the United States of America declared a State of Emergency for the Gulf Coast region of the State of Mississippi, in the counties of Covington, Forrest, Hancock, Harrison, Jackson, Jefferson Davis, Jones, Lamar, Marion, Pearl River, and Stone due to the impending landfall of Hurricane Katrina.

2.

On August 29, 2005, the President declared a major disaster exists in the State of Mississippi in the area struck by Hurricane Katrina on August 29, 2005, in the counties of Amite, Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Pearl River, Perry, Pike, Stone, Walthall, and Wilkinson. Pursuant to 42 U.S.C. § 5170, such a declaration must be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is

necessary. This major disaster creates an emergency need for a stay of the proceedings herein for an indefinite time as this Court determines to be proper. *See, e.g.* Emergency Notice from the United States Court of Appeals for the Fifth Circuit; *see also* Emergency Administrative Order of the Mississippi Supreme Court, *In re: Emergency Procedures Related to Hurricane Katrina's Disruption of Judicial Processes* collectively attached hereto as Exhibit "A."

3.

As is well known, and a matter of which the Court may take judicial notice, Hurricane Katrina, a disaster of historic proportions, did substantial damage to the State of Mississippi in and beyond the above-mentioned counties.

4.

In the wake of this disaster, the responsibilities of the Defendants and the Mississippi Department of Human Services ("MDHS") have increased many times over. MDHS is currently occupied with locating and accounting for its county employees, accounting for foster home families, accounting for children in group homes and shelters, and cataloguing lost buildings and the extent of damage to buildings still standing. *See*, Affidavit of Richard A. Berry attached hereto as Exhibit "B."

5.

At present, MDHS employees are manning 97 shelters containing 12,729 persons, as well as four shelters housing approximately 400 persons with special needs. MDHS anticipates that additional displaced persons from the State of Louisiana will soon be in need of shelter in the State of Mississippi.

6.


There are thousands of evacuees from the affected counties as well as from south Louisiana and the City of New Orleans throughout the entire State of Mississippi. As a result of the overwhelming needs of the families and children of the State of Mississippi, as well as the needs of the evacuee families from New Orleans and the State of Louisiana, for the foreseeable future the Defendants and MDHS employees and staff will not be available to participate in the captioned litigation, *James D. Johnson, et al. v. Haley Barbour, et al*; the Defendants and MDHS employees will be unable to give depositions or participate in the production of documents or other discovery as recently requested by the attorneys for the Plaintiffs, and as such, the Defendants respectfully request that this Court grant a stay of this action, including all discovery in this action, for an indefinite time as this Court determines to be appropriate.

THIS, the 7th day of September, 2005.

Respectfully submitted,

**HALEY BARBOUR, as Governor of the State of MS;
DONALD TAYLOR, as Exec. Dir. of the Dept.
of Human Services; and BILLY MANGOLD as
Director of the Div. of Family and Children's
Services**

BY:


Amy Keibert Elder

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing on the following by United States Mail, postage prepaid:

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SO CERTIFIED, this the 7th day of September, 2005.



Amy Kebert Elder

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Court Information

This September 2, 2005 note updates the information previously posted on the Internet.

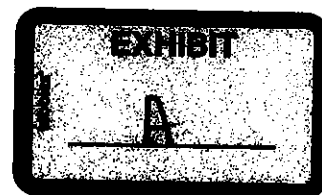
1. Attorneys and litigants should not send any filings or documents to New Orleans.
2. The court will remain closed through September 13, 2005. Court employees will continue to be in an Administrative Leave status.
3. All filing deadlines on or after August 24th through September 30th are automatically extended until October 3, 2005, and may be further extended. Before filing, check our Internet site www.ca5.uscourts.gov.
4. True emergency matters, e.g. death penalty cases with execution dates, or deportation matters with imminent and confirmed deportation dates, may be filed by FAX at 713-250-5050, or mailed or delivered to:

Chambers of Chief Judge Carolyn Dineen King
Room 11020
515 Rusk Street
Houston, Texas 77002.

5. We presently anticipate opening the clerk's office for a broader range of matters on or about September 14, 2005, at 515 Rusk Street, Houston, Texas. We will advise you when to begin sending filings and documents and provide you the exact mailing address, and physical office location shortly.

6. Please consult our website frequently for updated information.

Please send questions or comments to Webmaster_ca5_at_ca5.uscourts.gov (substitute @ for _at_).



Information for Attorneys and Litigants:

1. Do not send any filings or documents to New Orleans at this time.
2. All filing deadlines on or after August 24 through September 9 are automatically extended until September 12, subject to further extension. Before filing, check our internet website as set out below.
3. Attorneys and litigants are directed regularly to check our internet website, www.ca5.uscourts.gov for additional instructions and information.
4. True emergency matters, e.g. death penalty cases with execution dates, or deportation matters with an imminent and confirmed deportation dates, may be filed by FAX at 713-250-5050 or mailed or delivered to the Chambers of Chief Judge Carolyn Dineen King, Rm. 11020, 515 Rusk Street, Houston, Texas 77002.

FILED

SEP 06 2005

**SUPREME COURT OF MISSISSIPPI
NO. 2005-AD-00001**

SUPREME COURT CLERK

**IN RE: EMERGENCY PROCEDURES RELATED TO HURRICANE KATRINA'S
DISRUPTION OF JUDICIAL PROCESSES**

EMERGENCY ADMINISTRATIVE ORDER

On August 29, 2005, Mississippi was struck by hurricane Katrina, a catastrophe of historic proportions. In many counties, the courts and agencies and offices supporting the operation of courts cannot function normally. For that reason, the Supreme Court and the Chief Justice in his capacity as chief administrative officer of all courts in the state find that certain emergency actions as set for hereinafter are required.

All deadlines applicable under the Mississippi Rules of Appellate Procedure or notices of the Clerk of the appellate courts are amended as set forth in this order for emergency extensions and procedures. Notices of deadlines issued by the Clerk of the Supreme Court and the Court of Appeals shall continue to show deadlines applicable under the rules; however, the deadlines under such rules or stated in the notices of the Clerk or orders are modified as follows.

IT IS THEREFORE ORDERED:

Appellate Courts--Second (Southern) Supreme Court District. For all cases on appeal to the Supreme Court or the Court of Appeals (appellate courts) from trial courts located in the Second (Southern) Supreme Court District as defined in, Miss. Code Ann. Section 9-3-1 (Rev.2002), all deadlines falling on or after August 29, 2005, through October 31, 2005, are extended for 90 days from the due dates set by rules, clerk's notices and orders.

Appellate Courts--Oral Arguments. For appeals from trial courts located in the Second (Southern) Supreme Court District, all oral arguments heretofore set which have not been held are cancelled and shall be rescheduled by the appellate courts respectively.

Emergency Action by the Trial Courts. To prevent injustice due to the unusual circumstances caused by hurricane Katrina, as to trial court proceedings in courts located in the Second (Southern) Supreme Court District, (a) the trial courts are hereby authorized to exercise their sound discretion in extending deadlines, rescheduling hearings and trials and any other matters by case specific actions or by general orders; (b) the provisions of M.R.A.P. 2(c) prohibiting extensions of time for taking appeals are suspended through December 1, 2005; and (c) the prohibitions in M.R.C.P. 6(b) against extending the time for


taking any action under M.R.C.P. 50(b), 52(b), 59(b), 59(c), 59(e), and 60(b) are suspended through December 1, 2005. General orders by the trial courts shall be forwarded to the Supreme Court for publication.

Statutes of Limitations. The Court lacking the authority to extend statutes of limitations, anything to the contrary in this order notwithstanding, no extension granted or authorized herein shall extend beyond the limitations of action set by statute.

Publication of Orders. This order and all general orders filed with the Supreme Court shall be published on the Court's web site, at <http://www.mssc.state.ms.us/Body.htm> and otherwise as may be convenient and effective.

This order may be amended, extended or otherwise modified as circumstances dictate. In circumstances where the Supreme Court finds cases require immediate emergency action, the extensions provided for herein may be revoked or vacated.

SO ORDERED, this the 6th day of September, 2005.



JAMES W. SMITH, JR., CHIEF JUSTICE,
FOR THE COURT

DIAZ, J., NOT PARTICIPATING.

**IN THE UNITED STATES DISTRICT COURT
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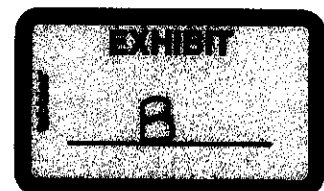
AFFIDAVIT OF RICHARD A. BERRY

STATE OF MISSISSIPPI

COUNTY OF HINDS

Personally came and appeared before me, the undersigned authority in and for the said County and State, within my jurisdiction, the within named Richard A. Berry who, having been duly sworn by me, states on oath:

1. My name is Richard A. Berry, and I am over 21 years of age. I am of sound mind, and I am competent to testify as to the matters set forth in this affidavit.
2. I am the Deputy Director of Programs for the Mississippi Department of Human Services, and I am familiar with the state of operations of the Mississippi Department of Human Services.
3. The Mississippi Department of Human Services is crippled by Hurricane Katrina. Since Monday, August 29, 2005, the state office has had no communication with its staff in nine counties. The state office has no way to reliably, predictably communicate with its county offices in several other counties.



4. MDHS is currently occupied with locating and accounting for its county employees, accounting for foster home families, accounting for children in group homes and shelters, and cataloguing lost buildings and the extent of damage to buildings still standing. There is little doubt that some foster families are homeless.

5. Department of Human Services employees are manning 97 shelters containing 12,729 persons, as well as four shelters housing approximately 400 persons with special needs. The state office is fielding numerous phone calls for help and facilitating relief efforts, including opening up to 13 more shelters to handle more evacuees from New Orleans

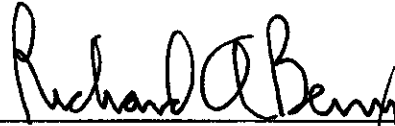
6. Given these dire circumstances, MDHS employees and staff will not be available for at least the next ninety (90) days to participate in the pending litigation, *James D. Johnson, et al. v. Haley Barbour, et al*; In the United States District Court for the Southern District of Mississippi, Jackson Division; Cause No. 3:04CV251LN. MDHS employees will be unable to give depositions or participate in the production of documents or other discovery as recently requested by the attorneys for the Plaintiffs.

7. The agency's county offices in a few counties have been demolished; others have been heavily damaged and are not habitable without major re-construction. Electric power is off over a wide area. Restoring power will require large-scale repairs throughout the system, from generating stations, to transmission lines and towers, to poles and wires in business districts and residential neighborhoods. Even at the state office, numerous employees' homes are without electricity or telephone service. Cell phone towers and radio station broadcast towers and antennas are not functioning, making communications difficult for many state office employees.

8. The matters set forth herein are based on my own personal knowledge of such matters and of my review and observation of current operations at MDHS.

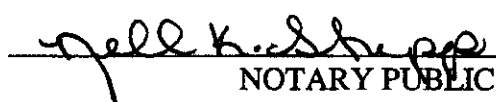
9. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

FURTHER AFFLIANT SAYETH NOT, this the 2nd day of September, 2005.



RICHARD A. BERRY

SWORN TO AND SUBSCRIBED BEFORE ME, this the 2 day of September, 2005.



NOTARY PUBLIC

My Commission Expires:

Feb. 12, 2006

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES FEB. 12, 2006
BONDED THRU STEGALL NOTARY SERVICE